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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4586 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

PRIYAM BIPINBHAI MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR SI NANAVATI for Petitioner

Mr.Y.F.Mehta Addl.P.P. for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 08/10/96

ORAL JUDGEMENT

Rule.

Notice was issued at the stage of admission to both the respondents. I have heard the learned advocate for the petitioner and Mr. Y.F.Mehta L.A.P.P. for the State at length. Therefore, at the stage of admission, I am finally deciding this petition. Shri Priyam B.Mehta, managing director of Maize Products, a Public Limited Company has preferred the present revision application under section 482 Cr.P.C. for quashing the order of issue of process passed by the learned Metropolitan Magistrate, Court no.6,Ahmedabad in cri. case no. 158/96, 159/96 and 160/96 as the managing director of the accused no.1 Maize Products Ltd.

2. It is vehemently urged before me by the learned advocate for the petitioner that in the complaint it self there is no disclosure as to why the present petitioner is made an accused in this case. He further relies upon section 2(g) of the Contract Labour (Regulation and Abolition) Act 1970 (hereinafter referred to as the Act)and contended before me that in view of the said specific provision, naming of the present petitioner as an accused is illegal and improper. Section 2(g) of the said Act reads as under:

" principal employer" means-

- (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.
- (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act 1948 (63 of 1948), the person so named"

If the above provisions of section are considered then it would be quite clear that the principal employer would be the factory manager. The petitioner has also produced at Annexure-B form No. 3 which is to be filled in by the factory under the said act and in the said form, the name of Mr. Anil M. Shah has been shown as the factory manager. When this form no.3 was filed by the company i.e. the factory, the action of the Labour Officer in not naming him and in naming the managing director is a gross abuse of his powers and said action on his part could not be at all justified.

2. When the complaint is filed before the learned Chief Judicial Magistrate it is always expected that he would apply his mind to the averments made in the complaint before passing an order of issuing process. It must be remembered that the order of issuing of process is a judicial order and whenever a judicial order is to be passed by any authority it is always expected that the authority will apply its mind before signing the judicial order. Had the learned Magistrate gone through the complaint itself, then it would have been quite clear to him that the complainant has not made out any case against the present petitioner who is accused no.2 in the complaint so as to justify his order of issuing process against accused no.2. Therefore, it is quite obvious that the order passed by the learned Magistrate, is without any application of mind. It has been repeatedly laid down by the Apex Court as well as this Court that at the time of issuing process against the director of any company, there must be some averment in the complaint which would justify the order of issuing of process.

{See
Mihir Textile Ltd & ors. vs. State of Gujarat
& anor. in Misc. Cri. Appln.No.1378/86 decided
by B.S.Kapadia .J decided on 12.1.89}

However, inspite of this the learned Magistrate has blindly issued the process.

3. It is further submitted before me that if the provisions of section 24 of the said Act are considered, then it would be clear that the offence is punishable with imprisonment for a term which may extent to three months, or with fine which may extend to one thousand rupees, or with both and consequently it is a summons case and though prescribed form and summons mention that the accused could appear either by himself or through his advocate, the printed term " through his advocate" has been struck off without mentioning as to why the appearance of the accused for the first day through his advocate was not proper in the instant case. When the case is of summary nature and the courts are filled in with backlog of number of cases, the appearance of the accused personally on the first day and every day need not be insisted. No doubt the magistrate can insist the presence of the accused in person when there is a question of identification of accused, when there is a date for recording of plea or framing of charge and when statement of the accused u/s 313 Cr.P.C. is to be recorded. Therefore, it is always expected that the

magistrate should exercise his powers judicially and by making use of judicial discretion when the magistrate wants to exercise the jurisdiction for insisting of the accused to appear personally on the first date of appearance of the case, I feel that he should indicate as to why such an event has to take place.

4. Thus in view of the material on record it would be quite clear that the order of issue of process issued against the present petitioner, is clear abuse of process of law and consequently said order will have to be quashed and the present petition will have to be allowed. In the circumstances, the orders of issue of process issued against the petitioner by the learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur in criminal case nos. 158/96, 159/96 and 160/96 are hereby quashed and set aside. The application is allowed. Rule made absolute.

(S.D.Pandit.J)